# The State of South Carolina

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The Honorable E. Crosby Lewis
Member, House of Representatives
Route 1, Box 158
Winnsboro, South Carolina 29180

Dear Representative Lewis:

You have asked whether the recent amendments to the Age Discrimination In Employment Act (29 U.S.C. § 621 et seq.) now prohibit this State from enforcing its mandatory retirement requirement with respect to directors of the Public Service Authority. It is our opinion that they do.

Pursuant to § 9-1-1530 of the Code, an employee or teacher in service

> who has attained the age of seventy years shall be retired forthwith, except that
>
> (1) With the approval of his employer he may remain in service until the end of the year following the date on which he attains the age of seventy years;
>
> (2) With the approval of his employer and the Board [Budget and Control], he may, upon his request therefor, be continued in service for a period of one year following each such request until such employee has reached the age of seventy-two years; and
>
> (3) With the approval of his employer, upon his request therefor, be continued in service for such period of time as may be necessary for such employee to qualify for coverage under the old age and survivors insurance provision of Title II of the Federal Social Security Act, as amended.

> It shall be mandatory for any employee or teacher whether or not appointed and regardless of whether or not a member of the South Carolina Retirement System to retire no later than the end of the fiscal year when he reaches his seventy-second birthday.
>
> Provided, however, that excepting constitutional offices, this section shall not apply to appointive offices receiving per diem or travel allowances as total compensation or to employees of the State Court System when such court employees are employed on a part-time basis.

Section 9-1-10(4) defines an "employee" in pertinent part as "... to the extent he is compensated by the State, any employee, agent or officer of the State or any of its departments, bureaus and institutions, other than the public schools, whether such employee is elected, appointed or employed ...". This Office has previously concluded that members of the Public Service Authority must comply with the foregoing mandatory retirement provisions. Ops. Atty. Gen., October 12, 1979.

Because Title VII of the Civil Rights Act of 1964 was deemed not to reach age discrimination, Congress in 1967 enacted the Age Discrimination in Employment Act (ADEA). The legislation was enacted to prohibit discrimination in employment because of age in such matters as hiring, job retention, compensation and other terms, conditions or privileges of employment. The congressional purpose is stated as intending "to promote employment of older persons based upon their ability rather than age; to prohibit arbitrary age discrimination in employment to help employers and workers find ways of meeting problems arising from the impact of age on employment." 29 U.S.C. § 621. Prior to the 1986 amendments, the ADEA protected workers who were at least 40, but less than 70 years of age from discrimination on the basis of age by most employers of 20 or more persons, employment agencies and labor organizations that have 25 or more members. State and local governments were covered by amendments to the ADEA in 1974 [29 U.S.C. § 630 (b)] and such applicability has been recently upheld by the United States Supreme Court as not contravening the 10th Amendment. EEOC v. Wyoming, 103 S.Ct. 1054, 75 L.Ed.2d 18 (1983). Most federal employees who are at least 40 years old are also covered, but without an upper age limit.

The ADEA contains certain exceptions. These include (1) where age is a bona fide occupational qualification reasonably necessary to normal operations of a particular business; (2) where differentiation is based on reasonable factors other than age; (3) to observe the terms of a bona fide seniority system or a bona fide employee benefit plan such as a retirement, pension or insurance plan, with the qualification that no seniority system or benefit plan may require or permit the involuntary retirement of any individual who is covered by the ADEA; and (4) where an employee is discharged or disciplined for good cause.

With respect to the State's mandatory retirement laws, it has been held that the ADEA does not preempt state statutes which are broader in coverage. Simpson v. Alaska State Comm. for Human Rights, 608 F.2d 1171 (9th Cir. 1979). However, to the extent that state mandatory retirement provisions conflict with the ADEA, it has been held that the Supremacy Clause dictates that federal law will prevail. Orzel v. City of Wauwatosa, 697 F.2d 743 (7th Cir. 1983), cert. den., 104 S.Ct. 484 (1983). This office has previously concluded that the mandatory retirement provisions contained in § 9-1-1530 do not conflict with the ADEA as previously enacted because the ADEA provided that the Act prohibits age discrimination "against persons who are between 40 and 70 years of age." As we have noted, "our State statute actually allows two more years of employment than is required by the federal statute." Op. Atty. Gen., July 20, 1982.

However, on November 1, 1986, the President signed into law H.R. 4154 which significantly amends the ADEA. H.R. 4154 amends Section 12 of the Act by removing the upper limit of seventy years for coverage under the ADEA. In short, coverage under the ADEA now has a lower limit of forty years of age, but no upper limit. The amendments to the Act take effect January 1, 1987. Thus H.R. 4154 supersedes this State's mandatory retirement laws except where a previous exception to coverage under the Act remains applicable. A good summary of the effect of H.R. 4154 is as follows:

> The new law, which was unanimously approved by Congress last month ... is the first major coverage change in the Age Discrimination in Employment Act since 1978 and amends the Act by extending all the protections currently available to those covered to private sector and most state and local government workers age 70 and older. Covered employers also are required

> to continue the same group health insurance extended to employees and their spouses to all their older workers.
>
> The law exempts from the mandatory retirement ban for seven years state and local public safety officers - police, firefighters, and prison guards - and tenured college and university professors. During this time, the Department of Labor and EEOC will be required to conduct studies to determine whether the retention of a mandatory retirement age for these occupations is justified.

Current Developments (Daily Labor Report) No. 213, A-15, November 4, 1986.

It is therefore evident that Congress, by removing the upper age limitations, sought to greatly extend coverage under the ADEA. However, Congress does not appear to have altered previously existing exemptions from the Act. Thus, in reference to your specific question, it still must be determined whether exceptions to or exemptions from the Act's applicability would be relevant with respect to the position of director of the Public Service Authority.

The ADEA defines an "employee" in pertinent part as

> an individual employed by an employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

29 U.S.C. § 630 (f). Clearly, a director of the Public Service Authority is not an official elected by the people, but is instead appointed by the Governor with the advice and consent of the Senate. Section 58-31-20. Nor would a director likely

be a person on an elected official's personal staff or an "immediate adviser with respect to the constitutional or legal powers of the office." See, Ramirez v. San Mateo Dist. Atty.'s Office, 639 F.2d 504 (9th Cir. 1981); E.E.O.C. v. Bd. of Trustees of Wayne Cty., 723 F.2d 509 (6th Cir. 1983). Since it cannot be said that a director is an employee "subject to the civil service laws", See, § 8-7-370, it must thus be determined whether a director is an "appointee on the policymaking level" within the meaning of the exemption contained in § 630(f).

As noted above, the Age Discrimination in Employment Act of 1967 was amended in 1974 to include within its coverage federal, state and local employees. The stated purpose of the amendment was "to include ... Federal, State and local government employees (other than elected officials and certain aides not covered by civil service.)" (emphasis added). 1974 Congressional and Administrative News, p. 2849. Since a director of the Public Service Authority is certainly not an "aide" of the elected official who may have appointed him, it is logical to conclude that he would be deemed an "employee" under the Act. However, the case law which has construed the exemption under the ADEA is virtually nonexistent and does not answer the question definitively. See, E.E.O.C. v. Reno, 758 F.2d 581, 584 (11th Cir. 1985); E.E.O.C. v. Bd. of Trustees of Wayne Cty. Comm. Coll., supra.

The language of the definition of "employee" as used in the ADEA is identical to the definition of "employee" used in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq. Courts construing the ADEA have thus looked to court decisions interpreting the definition of "employee" under § 2000(e) as analogous. E.E.O.C. v. Bd. of Trustees of Wayne Cty. Comm. Coll., supra.

In Gearhart v. State of Oregon, 410 F.Supp. 597 (D. Or. 1976), the legislative intent of the exemption contained in § 2000(e) was scrutinized in detail. There, the Court in examining the Congressional history of the exemption concluded that a deputy legislative counsel was an "employee" under Title VII. The Court observed:

> Some light is shed on this matter by the conference report of the Congress. The exemption granted to public officials and certain of their staff members originated in the Senate as a result of Senator Ervin's efforts. The House acceded to this amendment in conference. The conference committee stated its intention to

> "... exempt elected officials and members of their personal staffs, and persons appointed by such elected officials as advisers or to policymaking positions at the highest levels of the departments or agencies of State or local governments, such as cabinet officers, and persons of comparable responsibilities at the local level. It is the conferees intent that this exemption shall be construed narrowly." (Emphasis supplied.) 2 U.S. Code Cong. & Adm.News p. 2180 (1972).

The congressional purpose is to be divined, if at all, largely from the debate in the Senate conducted mostly by Senators Ervin, Javits (New York) and Williams (New Jersey). The purpose apparently was to provide exemption from the Act for public officials and those staff members or assistants whose selection by the elected official involves subtle considerations of the mixture of legislative or executive duties with the political facts of life. Realistically, some staff persons must be chosen with an eye not only to those functions which are characterized as those of a statesman, but as well those which are characterized as those of a politician. In short, most--but not all--elected officials are aware that they must keep an eye not only on the next generation but on the next election as well. Congress did not want State and local elective officials to be subjected to the strictures of the Equal Employment Opportunity Act in the selection of staff persons in sensitive or intimate positions. Congress, in using the term "immediate adviser," was trying to avoid exempting large groups of faceless technicians and researchers without sweeping into the Act the close personal policy making advisers deemed to be vitally necessary for the conduct of executive and legislative business by officials who are necessarily

> politicians as well. During the debate, Senator Williams asked Senator Ervin to define the clear area of exempt employees from the ambiguous area. Senator Ervin responded that the exemption was for "... the person who would advise him [the elected official] in regard to his legal or constitutional duties. It would not just be a law clerk." 18 Cong.Rec. 4096-4097 (1972). The relatively high status required to exempt an employee was again emphasized the following day when Senator Williams asked for clarification of the amendment in these terms: "That is basically the purpose of the amendment, to exempt from coverage those who are chosen by the Governor, or by the mayor or the county supervisor, whatever the elected official is, and who are in a close personal relationship and an immediate relationship with him. Those who are his first line advisers, is that basically the purpose of the Senator's amendment?" (Emphasis added.) 118 Cong. Rec. 4493 (1972). Senator Ervin responded, "That is the purpose of the amendment, yes." Id.

Other cases have construed the exemption similarly. For example, in Anderson v. City of Albuquerque, 690 F.2d 796 (10th Cir. 1982), the Court held that the position of staff director of the Albuquerque Human Rights Board was not exempt under § 2000(e). The Court concluded that the position was neither an appointment at the policymaking level nor an immediate advisor with respect to the constitutional or legal powers of the mayor who made the appointment. The Court emphasized that the purpose of the exclusion from coverage under § 2000(e) was "to exempt ... those who are chosen by the Governor or the mayor ... whatever the elected official is, and who are in a close personal relationship with him. Those who are his first line of advisors." 690 F.2d at 801. Concluded the Court:

> In sum, considering the facts of this case and construing the exemption narrowly, we conclude that the staff director does not formulate policy or advise the mayor so to create the immediate and personal relationship required by the exemption. (emphasis added).

Id.

And in Owens v. Rush, 654 F.2d 1370 (10th Cir. 1979), the Court, after examination of the Congressional history, concluded that the § 2000(e) exemption applied "only to those individuals who are in highly intimate and sensitive positions of responsibility on the staff of the elected official." 654 F.2d at 1375. Moreover, the Court in Morgan v. Tangipahoa Parish, 23 EPD § 31063 (U.S.D.C. La., No. 77-3814, 1979) held that deputy sheriffs were not normally "'policymaking' personnel who would occupy a position similar to a cabinet officer." The Court found that the exemption contained in § 2000(e) was meant to exclude "only high level policymaking members of an official's personal staff." In Perry v. City of Country Club Hills, 607 F.Supp. 771, 774 (D. Mo. 1983), the Court held that the "appointee on the policymaking level" exemption contained in § 2000(e) must be construed narrowly.

A legislative budget analyst was deemed in Bostick v. Rappleyea, 629 F.Supp. 1328 (N.D.N.Y. 1985) to be not the type of position which was "sensitive and intimate" to the Legislative Committee which employed her, so as to fall within the "policymaking" or "immediate advisor" exceptions to § 2000(e). The Court in Howard v. Ward Co., 418 F.Supp. 494 (D.N.D. 1976) concluded that a deputy sheriff was neither a member of a Sheriff's personal staff nor an "appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the [Sheriff's] office." In elaborating, the Court found that

> Those exclusions are aimed at persons such as members of a governor's cabinet or a mayor's personal secretary (provided they are not protected by state civil service) rather than at deputy sheriffs.

418 F.Supp. at 502.

The foregoing authorities, although not addressing the precise question at hand, would certainly appear to suggest that the exemption contained in § 2000(e) (and 29 U.S.C. § 630(f)) is intended in its entirety to exclude "only [those] high level policymaking members of an [elected] official's personal staff." Thus, such exemption would not appear to be aimed at officials such as a director of the Public Service Authority. These officials are not like members of a Governor's cabinet. While they are certainly policymaking officials, they are not necessarily officials who are in a "sensitive and intimate" relationship to the Governor and Senate who appoint them.

It must be recognized, however, that there is authority which arguably construes the phrase "appointee at the policymaking level" exemption to the contrary, and thus the question is a close one. At least one E.E.O.C. interpretation at first glance seems to interpret the "appointee on the policymaking level" exemption somewhat broadly. E.E.O.C. has ruled that the exemption for appointees on the policymaking level

> applies only where it is established that the individual is not covered by state or local civil service laws, is personally appointed by the elected official, and where the position is a policymaking one at the highest levels of a department or agency of a state or political subdivision of a state.

E.E.O.C. Dec. § 6725 (September 29, 1978). Thus, E.E.O.C. held that the chief executive officer of a commission who was appointed by the Governor was not an "employee". The decision also noted however, that the purpose of the exemption was to give

> elected officials complete freedom in appointing those who would direct state and local departments and agencies. These individuals must work closely with elected officials and their advisors in developing policies that will implement the overall goals of the elected officials. In order to achieve these goals, an elected official is likely to prefer individuals with similar political and ideological outlooks. Congress intended to allow elected officials the freedom to appoint those with whom they feel they can work best.

Applying this test, it is somewhat difficult to determine whether a director of the Public Service Authority falls within the exemption. It could be argued that the Governor and Senate chooses these directors on the basis of "similar ideological outlooks" and thus to implement a particular political ideology. However, the better interpretation, we believe, is to read the E.E.O.C. ruling as limited to appointments which have a more immediate impact upon the implementation of the policies of the elected official, i.e. cabinet members or agency heads in a similar position. We believe that is more the thrust of

the E.E.O.C. ruling by stating that the purpose of the exemption is "to allow the appointee to work closely with elected officials ... is developing policies that will implement the overall goals of the elected officials." Accord: E.E.O.C. Dec. No. 79-08, Empl. Prac. E.E.O.C. Dec. (CCH) § 6739 (October 20, 1978). See also, Op. Atty. Gen. (Md.) December 29, 1986.

We believe the reasoning of two federal decisions is particularly persuasive in this regard. In Goodwin v. Circuit Court of St. Louis Co., Mo. 729 F.2d 541 (8th Cir. 1984), the Court concluded that a hearing officer appointed by a circuit judge was an "employee" pursuant to § 2000(e) of the Civil Rights Act. While primarily the Court addressed that portion of the exemption dealing with the question of whether the hearing officer was an "immediate adviser with respect to the exercise of the constitutional or legal powers of the office", the overall reasoning of the Court is particularly relevant here. The Court analyzed the situation as follows:

> The Circuit Court argues that Goodwin was an immediate adviser to an elected official and thus does not qualify to sue.... We reject this argument. The legislative history of this exemption shows that it is meant to apply to those employees who are in "a close personal relationship with the official. [citations omitted] ... Here, ... Judge Corrigan [who appointed him] and Goodwin had very few personal contacts. Thus the job did not entail the sort of personal relationship contemplated in the exception. The hearing-officer job itself required Goodwin to assert her independent judgment free from any direction from others, including Judge Corrigan. While it can be said that Goodwin offered "advice" to Judge Corrigan in the sense of providing recommendations for the disposition of cases, this "advice" was of a formal, detached nature from one judicial officer to another. Any doubt that might exist that Goodwin functioned as an "immediate adviser" is resolved by the explicit Congressional intent that "this exception shall be construed narrowly."

729 F.2d at 548.

And in Parker v. Wallace, 596 F.Supp. 739 (M. D. Ala., N. D. 1984) in an analogous context, the Court held that an appointee (county license inspector) was not holding a position which would exempt him from First Amendment protection from discrimination on the basis of political affiliation. The Court noted that the Supreme Court in Elrod v. Burns, 427 U.S. 347 (1976) had recognized the "need to insure that policies which the electorate has sanctioned are effectively implemented", but that such "interest can be fully satisfied by limiting patronage dismissals to policymaking positions." 596 F.Supp. at 744. While the Court in Parker recognized that the license inspector clearly had policymaking responsibilities and access to confidential information, it nevertheless concluded that political affiliation was not a necessary prerequisite to holding the position. The clear implication of the ruling in Parker is that the position in question was not the type of intimate and sensitive position requiring exemption from First Amendment protection.

Likewise, we do not believe the position of director of the Public Service Authority requires exemption from ADEA protection. Directors serve a specified term of seven years which of course, overlaps the terms of those making the appointment. To our knowledge, there is relatively little contact between the appointee and appointing authority or "advice" rendered to the appointing authority after the appointment is made. Public Service Authority directors, while they are clearly "policymakers" function relatively autonomously and make relatively independent policy judgments. Since the "employee" exemptions are required to be construed narrowly, we believe, therefore, that a director is an "employee" for the purposes of the ADEA. 1/

Neither would the "bona fide occupational qualification" exception contained in 29 U.S.C. § 623 (f) be applicable to this situation. Any exception to the ADEA is to be narrowly construed. Smallwood v. United Air Lines, 661 F.2d 303 (4th Cir. 1981). And the "bona fide occupational qualification" exception is generally reserved for officers in law enforcement and public safety, the type of personnel specifically exempted by the new amendments. It is our view that age would

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1/ Moreover, federal case law indicates that the ADEA is applicable even where the individual concerned is considered an "officer" rather than an "employee". See, E.E.O.C. v. City of Linton, 623 F.Supp. 724 (S.D. Ind. 1985) [police officer]; E.E.O.C. v. Mo. State Hwy. Patrol, 555 F.Supp. 97 (W.D. Mo. C.D.) [highway patrol]; Kossman v. Kalumet Co., 600 F.Supp. 175 (E.D. Wis. 1985).

not represent a bona fide occupational qualification for service as director of the Public Service Authority; thus, as with the other recognized exemptions, we deem the bona fide occupational qualification exception to be inapplicable.

One other exception to the Act's applicability should be noted. 29 U.S.C. § 631 (c) (1) provides:

> Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer of the employee which equals, in the aggregate, at least $44,000. (emphasis added).

The Equal Employment Opportunity Commission (EEOC) has promulgated regulations further clarifying this provision of the ADEA. Such regulations note at the outset:

> Since this provision is an exemption from the non-discrimination requirements of the Act, the burden is on the one seeking to invoke the exemption to show that every element has been clearly and unmistakably met. Moreover, as with other exemptions from the Act, this exemption should be narrowly construed.

29 C.F.R. § 1615.12.

The EEOC regulations further note that, in order for an employee to be deemed a "bona fide executive" under 29 U.S.C. § 631 (c) (1) of the ADEA, the employer must initially show that the employee satisfies the same definition "set forth in § 541.1 of this chapter." In § 541.1, the Department of Labor has sought to define "bona fide executive" as that term is used in § 13 (a) (1) of the Fair Labor Standards Act; such provision of the FLSA exempts "bona fide executives" from coverage under that Act. According to the EEOC regulations, each of the

elements (a) through (e) as specified in § 541.1 must be satisfied in order for even possible consideration of an exemption from the ADEA, pursuant to the bona fide executive exemption. 2/ The regulations recognize that application of the test is a factual question and must be resolved on a case by case basis.

Section 541.1 provides as follows:

> The term "employee employed in a bona fide executive capacity" in Section 13 (a) (1) of the Act (FLSA) shall mean any employee:
>
> (a) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department of subdivision thereof; and
>
> (b) Who customarily and regularly directs the work of two or more employees therein; and
>
> (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations

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2/ It is clear that meeting the requirements of § 541.1 is in itself not sufficient for an employer's entitlement to an exemption under 29 U.S.C. § 631 (c) (1) of the ADEA. The EEOC regulations, 29 C.F.R. § 1625.12 (2), provide:

> Even if an employee qualifies as an executive under the definition in § 541.1 of this chapter, the exemption from the ADEA may not be claimed unless the employee also meets the further criteria specified in the Conference Committee Report in the form of examples (see HR Rept. No. 95-950, p. 9). The examples are intended to make clear that the exemption does not apply to middle-management employees, no matter how great their retirement income, but only to a very few top level employees who exercise substantial executive authority over a significant number of employees and a large volume of business.

> as for the hiring and firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
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> (d) Who customarily and regularly exercises discretionary powers; and
>
> (e) Who does not devote more than 20 percent, or in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his hours of work in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section....

It cannot be said with certainty that a director meets each and every one of the criteria set forth in § 541.1. 3/ However, in any event, we are advised that the individual in question would not be entitled to an "immediate nonforfeitable annual retirement benefit ... of the employer of the employee which equals in the aggregate, at least $44,000." 4/ Thus, based upon the information provided to us, § 631 (c) (1) would not be applicable.

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3/ This exception, as well as the "high policymaking position" exception, are discussed in considerable detail in Op. Atty. Gen., January 13, 1987.

4/ 29 C.F.R. § 1625.12 requires that the annual retirement benefit must equal, in the aggregate, at least $44,000. The regulation further states that "[i]n determining whether the aggregate annual retirement benefit equals at least $44,000, the only benefits which may be counted are those authorized by and provided under the terms of the pension, profit-sharing, savings, or deferred compensation plan." Reference is made to § 1627.17 for calculation of such benefits. Subsection (e) of § 1627.17 indicates that employee contributions must be excluded from the calculation. Thus, it would appear that the $44,000 figure must be met on the basis of retirement benefits which would be received if only employer contributions were calculated.

More fundamentally however, we question whether 29 U.S.C. § 631 (c) (1) of the ADEA was intended to apply to the type of situation presented here. This provision of the ADEA was enacted in 1978. As indicated above, in enacting this provision, Congress made it clear that it intended to use the definition of "bona fide executive" under the Fair Labor Standards Act as a "guideline for determining those employees who meet the definition of 'executive' for purposes of this amendment." 1978 Congressional and Administrative News at 530. Since the United States Supreme Court had, at the time of enactment of the amendment, held that Congress could not constitutionally apply the FLSA to State governments, National League of Cities v. Usery, 426 U.S. 833 (1976), it is thus unlikely that Congress intended 29 U.S.C. § 631 (c) (1) to apply employees other than those "covered" by the Act at that time, i.e. private executives. See, 1978 Congressional and Administrative News, 531; 29 C.F.R. § 1625.12.

Moreover, we have found no case holding that this provision of the ADEA is applicable to high ranking state or local officials. In addition, at least one labor law publication indicates that the "bona fide executive" exemption was intended to be applied to "executive or high-policy making employees in private industry ...". (emphasis added). Current Developments (Daily Labor Report), A-16 (No. 213), November 4, 1986. Thus, for this reason also, we believe the exemption contained in 29 U.S.C. § 631 (c) (1) to be inapplicable.

As noted above, effective January 1, 1987, the ADEA's upper age limit is removed. Thus, based upon the foregoing and upon the view that no exception to or exemption from the Act appears to be applicable in this instance, it is our opinion that, effective January 1, 1987, a director of the South Carolina Public Service Authority who reaches mandatory retirement age after that date, is no longer required to retire at age 70.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

RDC/an